

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

UNITED STATES OF AMERICA	:
	:
	: CRIMINAL ACTION
v.	:
	:
	: NO. 1:13-cr-045-JEC -2
VICTOR ORTUNO-PENALOZA	:

**REPORT AND RECOMMENDATION CONCERNING PLEA OF GUILTY<sup>1</sup>**


The defendant, Victor Ortuno-Penalosa ("defendant"), by consent, has appeared before the undersigned United States Magistrate Judge and has entered a plea of guilty to Count One of the Indictment. After cautioning and examining the defendant under oath concerning each of the subjects mentioned in Rule 11, I have determined that the guilty plea was knowing and voluntary, and that the plea to the offense charged is supported by an independent basis in fact establishing each of the essential elements of the offense. I have also determined that, to the maximum extent permitted by federal law, the defendant has voluntarily and expressly waived his right to appeal the conviction and sentence and the right to collaterally attack his sentence in any post-conviction proceedings, including by motion filed pursuant to 28 U.S.C. § 2255, on any ground, except that the defendant may file a direct appeal

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<sup>1</sup> Failure to file written objections to this Report and Recommendation within **FOURTEEN (14) DAYS** after service of a copy of this Report and Recommendation shall bar an aggrieved party from attacking such Report and Recommendation before the assigned United States District Judge. 28 U.S.C. § 636(b)(1)(B).

of an upward departure or a variance from the sentencing guideline range as calculated by the district court, and if the Government appeals the sentence imposed, the defendant may also file a cross-appeal of that same sentence. It is, therefore, **RECOMMENDED** that the plea of guilty be accepted and that the defendant be adjudged guilty and have sentence imposed accordingly.

**IT IS SO RECOMMENDED** this 30th day of August, 2013.

  
RUSSELL G. VINEYARD  
UNITED STATES MAGISTRATE JUDGE